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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 CLIFFORD ALAN DILBERT,

12 Petitioner,

13 v.

14 R. FISHER, Warden,

15 Respondent.
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No. 1:20-cv-01835-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE AND CLOSE
CASE, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Doc. Nos. 1, 8)

18 Petitioner is a state prisoner proceeding *in propria persona* with a petition for writ of
19 habeas corpus pursuant to 28 U.S.C. § 2254. On January 11, 2021, the assigned magistrate judge
20 issued findings and recommendations recommending that the petition pending before the court be
21 dismissed. (Doc. No. 8.) These findings and recommendations were served upon all parties and
22 contained notice that any objections thereto were to be filed within thirty (30) days from the date
23 of service. (*Id.* at 4.) On January 21, 2021, petitioner filed objections to the magistrate judge's
24 findings and recommendations. (Doc. No. 11.)

25 In his objections, petitioner reiterates arguments previously raised in his petition and again
26 seeks his release from incarceration due to the alleged continuing unreasonable risk of petitioner's
27 exposure to COVID-19 resulting from existing unsafe prison conditions and the risk to petitioner
28 of rapid death or serious injury due to complications from COVID-19 because of his advanced

1 age and/or medical infirmities. (*See id.*) Specifically, petitioner states that he “is challenging the
2 conditions of confinement brought on by the pandemic,” and that his “habeas, as such, can be
3 heard on the merits within the Federal District in which he is housed as it does not relate to his
4 conviction, but ongoing conditions of confinement brought on by the unique circumstances of the
5 Covid pandemic . . .” (*Id.* at 9.)

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
7 *de novo* review of the case. Having carefully reviewed the entire file, including petitioner’s
8 objections, the court concludes that the magistrate judge’s findings and recommendations are
9 supported by the record and proper analysis. As explained by the magistrate judge, a civil rights
10 action brought pursuant to 42 U.S.C. § 1983, not a federal habeas petition, is the proper method
11 for a prisoner to challenge the conditions of his confinement. (*See* Doc. No. 8 at 3.) Furthermore,
12 if “petitioner is seeking compassionate release pursuant to 18 U.S.C. § 3582 due to the risks
13 posed to him by the COVID-19 pandemic, his request is before the wrong court, because ‘[o]nly
14 the sentencing court can entertain such requests.’” (*Id.* (citations omitted).) By petitioner’s own
15 admissions, he seeks relief beyond the scope of a federal habeas petition and thus, his petition
16 must be dismissed.

17 In addition, the court declines to issue a certificate of appealability. A state prisoner
18 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of
19 his petition, and an appeal is only allowed in certain circumstances. 28 U.S.C. § 2253; *Miller-El*
20 *v. Cockrell*, 537 U.S. 322, 335–36 (2003). If a court denies a petitioner’s petition, the court may
21 only issue a certificate of appealability when a petitioner makes a substantial showing of the
22 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the
23 petitioner must establish that “reasonable jurists could debate whether (or, for that matter, agree
24 that) the petition should have been resolved in a different manner or that the issues presented
25 were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473,
26 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

27 In the present case, the court finds that petitioner has not made the required substantial
28 showing of the denial of a constitutional right to justify the issuance of a certificate of

1 appealability. Reasonable jurists would not find the court's determination that petitioner is not
2 entitled to federal habeas corpus relief to be debatable, wrong, or deserving of encouragement to
3 proceed further. Thus, the court declines to issue a certificate of appealability.

4 Accordingly, the court orders as follows:

- 5 1. The findings and recommendations, filed January 11, 2021 (Doc. No. 8), are
6 adopted;
- 7 2. The petition for writ of habeas corpus is dismissed;
- 8 3. The Clerk of Court is directed to assign a district judge to this case for the purpose
9 of closing the case and then to close the case; and
- 10 4. The court declines to issue a certificate of appealability.

11 IT IS SO ORDERED.

12 Dated: **April 30, 2021**

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15 UNITED STATES DISTRICT JUDGE
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